

IN THE COURT OF APPEALS OF IOWA

No. 8-366 / 07-1582

Filed June 25, 2008

**IN RE THE MARRIAGE OF RUSSELL PATRICK AKERS
AND DAWN MARIE AKERS**

**Upon the Petition of
RUSSELL PATRICK AKERS,**
Petitioner-Appellant,

**And Concerning
DAWN MARIE AKERS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Bremer County, Stephen P. Carroll,
Judge.

The petitioner appeals the district court's ruling setting the child support obligations of the parties pursuant to a previous stipulation. **AFFIRMED IN PART AND REVERSED IN PART.**

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellant.

Karen Thalacker of Gallagher, Langlas & Gallagher, P.C., Waverly, for
appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Russell Akers appeals the district court's order setting the child support obligations pursuant to Russell and Dawn Akers's August 2004 dissolution decree. We conclude the district court's ruling setting child support was proper, and we affirm as to that issue. We disagree, however, with the district court's decision with regard to allocation of the parties' children as tax exemptions, and we reverse as to that issue.

I. Background Facts and Proceedings.

Russell and Dawn were married in 1997 and have three children: Danielle, born in June 1997; Shaelie, born in February 1999; and Janessa, born in April 2001. At the time of trial, Russell was forty-two years old and Dawn was forty-four years old.

Russell filed a petition for dissolution on May 2, 2003. In July 2004 the parties entered into a partial stipulation, and in August 2004 the district court issued the parties' dissolution decree. In the stipulation, the parties agreed that the children would be in primary physical care with Dawn until January 2, 2007, at which time the parties would begin joint physical care of the children. In the decree, the court ordered Russell to pay \$682.74 per month in child support and allowed him to claim the parties' three children as income tax exemptions.

In December 2006 Russell filed a petition to modify the parties' child support obligations. In January 2007 he re-filed his request as an application to set child support.¹ Following a hearing in February 2007, the court issued an

¹ Because the change in physical care of the children was based on a previous stipulation between the parties, Russell's application to set child support was proper. It

order setting child support obligations in August 2007. The court imputed a part-time salary to Dawn and ordered Russell to pay \$363 per month in child support. The court further allowed Dawn to claim one child as a tax exemption and Russell to claim the other two children.

Russell argues the court should have imputed a full-time salary to Dawn and that neither party should pay child support. Russell further contends he should be allowed to keep the parties' three children as income tax exemptions. Finally, Dawn requests appellate attorney fees. Once again, we conclude the district court's ruling setting child support was proper and we affirm. However, we disagree with the district court's ruling changing the tax exemptions and reverse as to that issue.

II. Scope and Standard of Review.

We review stipulations of dissolution decrees de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Issues on Appeal.

A. Child Support.

Russell argues the district court erred in imputing to Dawn a part-time salary rather than a full-time salary for purposes of calculating child support. He contends that Dawn agreed at the time of the parties' divorce that she would

was not necessary for the court to find a substantial change in circumstances warranting a modification to a stipulation already agreed upon between the parties.

return to work when the parties' youngest child started school. Russell argues that Dawn had sufficient time and opportunities to find full-time employment since the fall of 2006 when the parties' youngest daughter began school. At the time of the hearing on February 12, 2007, however, Dawn was working less than twenty hours every two weeks.

Upon our careful review of the district court's decision, we find the decision is well-reasoned and there is little we can add. We find the district court decision is soundly based on equity. We therefore agree with the district court and affirm on this issue.

B. Tax Exemptions.

Russell next argues the district court erred in allowing Dawn to now claim one of the parties' three children as an income tax exemption. In the court's original decree, it permitted Russell to claim all three children as tax exemptions due to his full-time income. Russell contends that because he is still employed full-time whereas Dawn works less than twenty hours every two weeks, he should still be allowed to claim all the children for tax purposes.

Dawn did not address the allocation of the children as tax exemptions in her answer. We find the burden is on Dawn to prove she would better benefit by being allowed to claim one or more of the children as tax exemptions. The parties did not allude to a change in the tax exemption allocations in their stipulation and the original dissolution decree did not mention such a change. Further, although the district court set the child support obligations based on Dawn's imputed income, the evidence shows that Dawn's income is actually

lower than her imputed income. For these reasons, we disagree with the district court's tax exemption allocations. Russell should therefore still be allowed to claim the parties' three children for income tax purposes. We reverse on this issue.

C. Attorney Fees.

Finally, Dawn requests appellate attorney fees. This court has broad discretion in awarding attorney fees on appeal. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* Given the relative asset position of the parties, we deny Dawn's request for appellate attorney fees. Costs on appeal are assessed one-half to Dawn and one-half to Russell.

AFFIRMED IN PART AND REVERSED IN PART.